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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA, for) CASE NO: 3:14-cv-2503
17 the use and benefit of HCI SYSTEMS,)
18 INC., a California corporation,)
19 Plaintiff,) **STIPULATION TO CONTINUE**
20 v.) **INITIAL CASE MANAGEMENT**
21 AGBAYANI CONSTRUCTION)
22 CORPORATION, a California)
23 Corporation; FIRST NATIONAL) **CONFERENCE AND RELATED**
24 INSURANCE COMPANY OF) **DATES and ORDER THEREON**
25 AMERICA, a Massachusetts corporation;)
26 SABAH INTERNATIONAL, INC., a) **Scheduled CMC Date: October 9, 2014**
27 California corporation; DOES 1 through) **Scheduled CMC Time: 10:00 a.m.**
28 15, inclusive,)
Defendants.)

1 Plaintiff HCI Systems, Inc. ("HCI"), and Defendants Agbayani Construction
2 Corporation ("ACC"), and First National Insurance Company of America ("First National"),
3 by and through their respective counsel, hereby stipulate and agree as follows:

4 WHEREAS, on September 17, 2014, counsel for the parties to this Action met and
5 conferred as required by this Court's ORDER SETTING INITIAL CASE MANAGEMENT
6 CONFERENCE AND ADR DEADLINES, and the contents of this Stipulation were the
7 subjects upon which counsel met and conferred;

8 WHEREAS, the parties recognize that various claims between the parties in this
9 Action relate to the a construction contract between HCI and ACC, and/or the activities of
10 the parties before, during and after the dispute between HCI and ACC arose under the
11 construction contract;

12 WHEREAS, HCI and ACC have agreed to mediate their construction contract
13 dispute;

14 WHEREAS, the construction contract between HCI and ACC contains an arbitration
15 provision;

16 WHEREAS, HCI and ACC have agreed to enter into a stipulation to first mediate
17 and, if mediation is not successful, then arbitrate, the construction contract dispute ("ADR
18 Stipulation"):

19 WHEREAS, the construction dispute between HCI and ACC has components that are
20 technical in nature, and, thus, HCI and ACC desire the terms of the ADR Stipulation to
21 include discovery and case management provisions, along with a time table for both, in
22 order to assist HCI and ACC in exchanging necessary documents and information to have a
23 fruitful mediation, and, therefore, HCI and ACC need some time to work out the details of
24 such ADR Stipulation;

25 WHEREAS, Sabah has a pending dispositive motion to be heard on October 9, 2014,
26 and, thus, it is not known whether or not Sabah will need to participate in the ADR
27

1 Stipulation;

2 WHEREAS, the parties desire to avoid (1) expending the resources to prepare a
3 formal Rule 26(f) report and joint CMC statement and (2) this Court expending further
4 resources, given the construction contract dispute will be resolved through the private ADR
5 process, and, thus, the parties request that this Court continue the Initial CMC date for 30
6 days so that the results of Sabah's dispositive motion will be known and so that HCI and
7 ACC can draft their ADR Stipulation prior to the requested continued date of the Initial
8 CMC;

9 WHEREAS, counsel for HCI and ACC are in communications with counsel for
10 Sabah, so that once the result of the pending motion is known, Sabah could be included in
11 the development of the ADR Stipulation and proceeding with this Action forward;

12 WHEREAS, counsel for Sabah indicated during the meet and confer that he is in
13 agreement with continuing the Initial CMC;

14 NOW, THEREFORE, THE PARTIES HEREBY AGREE AND STIPULATE
15 THAT:

- 17 1. HCI and ACC prepare and execute an ADR Stipulation whereby HCI and
18 ACC agree to the scope and timing of the exchange of information for
19 purposes of preparing to mediate, and, in the event that mediation fails,
20 arbitrate, the construction contract dispute;
- 21 2. Such ADR Stipulation set forth a proposed timeline for conducting the
22 mediation, and, in the event mediation fails, arbitration;
- 23 3. Said ADR Stipulation will seek a stay of the Action between ACC, its surety
24 First National, and HCI;
- 25 4. After the outcome of the Sabah motion is known, Counsel will further discuss
26 whether the stay will apply as to Sabah,
- 27 5. Such ADR Stipulation be completed and filed with this Court no later than 14

1 days prior to the continued Initial CMC; and

- 2 6. The Initial CMC be continued at least 30 days, with all related dates being
3 adjusted accordingly.

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5 IT IS SO STIPULATED.

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7 DATED: September 19, 2014

SCHOLEFIELD, P.C.

8 By: /s/ **Pamela J. Scholefield**
9 PAMELA J. SCHOLEFIELD

10 Attorneys for Defendants Agbayani Construction
11 Corporation and First National Insurance Company
12 of America

13
14 DATED: September 19, 2014

HUNT ORTMANN PALFFY
NIEVES DARLING & MAH, INC.

15 By: /s/ **Wahid E. Guirguis**
16 WAHID E. GUIRGUIS
17 Attorneys for Plaintiff HCI Systems, Inc.

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20 **ORDER**

21 Based on the above Stipulation, the Court finds that good cause exists to grant the
22 relief requested, and

23 IT IS HEREBY ORDERED:

- 24 1. That HCI and ACC prepare and execute an ADR Stipulation whereby HCI and
25 ACC agree to the scope and timing of the exchange of information for purposes
26 of preparing to mediate, and, in the event that mediation fails, arbitrate, the
27 construction contract dispute;

- 1 2. That such ADR Stipulation set forth a proposed timeline for conducting the
2 mediation, and, in the event mediation fails, arbitration;
3 3. That said ADR Stipulation seek a stay of the Action between ACC, its surety First
4 National, and HCI;
5 4. That, after the outcome of the Sabah motion is known, Counsel will further
6 discuss whether the stay will apply as to Sabah,
7 5. That such ADR Stipulation be completed and filed with this Court no later than
8 14 days prior to the continued Initial CMC; and
9 6. That the Initial CMC be continued to 12/18/14 at 10:00am, with all related
10 dates being adjusted accordingly.

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12 IT IS SO ORDERED.
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14 Dated: 9/19/2014
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